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# Implementation of Proposition 103, September 8, 1989

Senate Committee on Insurance, Claims and Corporations

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CALIFORNIA LEGISLATURE  
SENATE COMMITTEE ON  
INSURANCE, CLAIMS AND CORPORATIONS  
SENATOR ALAN ROBBINS, CHAIR

**IMPLEMENTATION OF PROPOSITION 103**

DEPOSITORY

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September 8, 1989  
Los Angeles, California

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CALIFORNIA LEGISLATURE  
SENATE COMMITTEE ON INSURANCE, CLAIMS AND CORPORATIONS  
ALAN ROBBINS, CHAIR

IMPLEMENTATION OF PROPOSITION 103



September 8, 1989  
Los Angeles

CHAIRMAN ROBBINS: Please take a seat. If you have handouts, please hand out your handouts. We try to run a policy with this committee of starting on time for our hearings.

Let me begin by thanking both representatives of Prop. 103 and the representatives of the Commissioner's office for attending this hearing, which is a continuation of our hearing from August 28th. Roxani, I hope your back's feeling better.

COMMISSIONER ROXANI GILLESPIE: Not really. I'm doing my best.

CHAIRMAN ROBBINS: Well, I can tell you from experience that going into hearings with Mr. Rosenfield can be a pain in the back, but...

COMMISSIONER GILLESPIE: That's not the point. It's a generic back problem.

CHAIRMAN ROBBINS: Anything we can do to accommodate you in terms of seating and any point that you need a break, please don't hesitate to...

COMMISSIONER GILLESPIE: I appreciate that. I've taken the right chair.

CHAIRMAN ROBBINS: ...to let us know. And I think it's very important that we have, for the first time, the Commissioner and the Prop. 103 authors together so that we can resolve the questions on the implementation of Prop. 103.

There were a number of questions raised at the last hearing; specifically, questions relating to when there're going to be hearings, are all the companies going to require hearings, why insurance companies are being granted an 11.2 percent rate of return, is there sufficient staff to get everything done timely and when will it be done, have there been private meetings with the insurance companies.

What I would like to do would be to start by going through the questions that were unanswered, particularly the questions where, at the last hearing, that your staff said, "You'll have to ask the Commissioner." And I think it is very important that we have you here and that we're able to deal with this in a format where there will be questions and answers. Each question, we would appreciate it being answered within two minutes. Any question that's asked the Department we will give the Prop. 103 people the chance to comment. Anything that's asked of the Prop. 103 people we will, after their two minutes, give the Department a chance to comment.

I do have to tell you, I received in yesterday's mail a copy of your interview and the...

COMMISSIONER GILLESPIE: You can tell my wardrobe is limited.

CHAIRMAN ROBBINS: I can tell from the cover that you have a strong preference towards blue -- or actually...

COMMISSIONER GILLESPIE: It's the same one.

CHAIRMAN ROBBINS: ...dresses. And I have one question from one of the things in the interview, because in the interview, in here you said that the hearings would be completed by November, and we're going to ask you about that.

But let's start with going through the questions that were asked...

COMMISSIONER GILLESPIE: Senator, may I make a suggestion, as I have listened to your questions? And I know how you conduct your hearings, in an extremely efficient and quick manner. I

think the best way to go about it, as I have been listening to your questions, is for me to give you a very rapid update, because unless we do that, I don't think that you will be in a position to really understand truly what are the questions that remain to be answered. So I think I need to give you a very, very quick update, and I know you'll...

CHAIRMAN ROBBINS: Give us a two-minute update on...

COMMISSIONER GILLESPIE: Yes. I will do that.

CHAIRMAN ROBBINS: Jim will start the clock and then we will give you questions. Actually, out of fairness, give us a two-minute update, or down-date, because if the Commissioner goes up, I'm sure you'll want to go down. And then...

SENATOR ED DAVIS: Mr. Chairman? I'm not sure it's fair to limit this complex a subject to a two-minute presentation. If we really want to learn what the Commissioner's been doing, not just the allegations contained in the questions here, I think it would -- in all fairness, there ought to be an appropriate length of time in which the Commissioner, who has looked at your questions and all, to try to cover some of that subject matter. If this is a court of law or something, we'll give the prosecutors their chance and give them the same amount of time.

CHAIRMAN ROBBINS: The Commissioner would like to make a 2:00 meeting with the Governor in Sacramento today. I would like to do everything I can to help her do that. If I give -- allow everything to go on on an unlimited time basis, that won't be the case. I've read her prepared statement, as I presume you have. I think she could summarize it in two minutes.

COMMISSIONER GILLESPIE: I will do my best. First of all, I think it's very important for everyone to understand that the Department of Insurance is fully and completely committed to the very timely and complete implementation of Proposition 103 as interpreted by the Supreme Court.

The problem that we have had all along is that the court case is what has been forgotten by the proponents of the Proposition. And the whole process that we have embarked upon, and which started this week, has been because of what the Supreme Court told us to do. They told us that we had to find a fair rate of return for insurance companies and they had the right to have that before giving the public the 20 percent rollback. And that is the process that we have been starting because the Supreme Court never told us what a fair rate of return is.

There has been a lot of misunderstandings about the way that we have been proceeding. We started with the 11.2 bench mark because that's what we found with the help of the Stanford Research Institute that most companies made actually within a 15-year period. But our hearings are there in order to make that determination.

And I don't know, Senator, whether you invited any of the consumer groups today, but the reason that no one else is here is because of the fact that everyone else is working precisely on those issues. We're having a meeting with the insurance industry, the Department, Insurance Consumers Action Network, Consumers Union, Public Advocates -- we're all in there -- the Attorney General's office -- we're all in there working on precisely those issues. And what we have done is we have put forward the most profitable companies. That is what you do when you try and give rollbacks to consumers. We have put forward the most profitable, and then we are going to call the biggest, and

we're also going to have a generic hearing for a lot of the others.

What is very apparent when you read Proposition 103, and for some reason its proponents choose to forget, is that anyone can bring a request for a hearing on any rate whatsoever. So if anyone is dissatisfied with any specific rate, they can do it. But, the Department has put together a process, which is being worked on right now, to do it as quickly, effectively, efficiently as possible and in a timely fashion for the November 8 time when the prior approval process starts.

But let's make no mistake about it. The toughest part of what the Department of Insurance is faced with is the rating plan, and the rating plan is very, very difficult and wrenching for us, because what the people of California voted was for lower rates.

We made a study with the help of the Stanford Research Institute and we found that on the basis of the methods that Proposition 103 seems to dictate, a lot of people are going to see rate increases. It's something like 70 percent of our drivers might end up with rate increases. That is our toughest issue, and that is where we need your help, Senator. That is where we need the help of the Legislature, because even though we can have an initiative that says we'd like to get 20 or 30 or 50 percent off something -- for my part, what I would love to see reduced right now is the cost of college tuition -- but, you know, we can have an initiative for anything, and most of these initiatives would pass because people would like to see prices come down. But we need to get there in a manner that is correct.

We have to live with the fact that the Supreme Court told us no, you can't have an initiative that says simply everything goes down 20 percent. It just can't be done. We have to live with that reality.

And the difference between what we are up against now, versus what we were up against before, is that we finally have the tools to make certain that when we put the reforms in place, which we need to put in place in order to stop the price gouging by the other side -- the price gouging by the lawyers through the fender-bender accidents -- now we have the tools to make sure that the savings are passed on to consumers. They are there and we need your help to accomplish that. The Department of Insurance cannot do it by itself, and what we're faced with right now is a situation where, as I see it, we continue to have the same type of gridlock as we had last year. And everything I have seen takes care of the insurance companies, takes care of the lawyers, but I have yet to see the proper product that helps consumers. Unfortunately, that's dead. And there have been a lot of headlines. There has been a lot of opportunism based on the misinformation, based on the confusion here, and it's a very sad situation. But I am hoping that with your help, we can complete what Proposition 103 started.

Thank you very much.

CHAIRMAN ROBBINS: Thank you for your prepared two-minute statement that took slightly over four minutes. Voter Revolt, two minutes. Please try to be more precise.

MR. HARVEY ROSENFELD: Mr. Chairman, members of the committee, thank you for the opportunity for us to be here. I'm Harvey Rosenfield from Voter Revolt. Conway Collis is the Chair of the Prop. 103 Intervention Team. We'd like to make just a few very brief introductory comments.

The people of California gave the Insurance Commissioner all the tools she needs to make sure that our rates are reduced now and in the long term. The Supreme Court did not reject the 20 percent rollback contained in Prop. 103. The Supreme Court upheld the rollback. The Supreme Court did not say that any insurance company in particular was entitled to a fair rate of return; only that a reasonably efficient insurance company was entitled to a fair rate of return. And that unless that particular company could come in and show that it was reasonably efficient and could not withstand the rollback, it must reduce its rates to 20 percent.

The reason why the people have not received their rollbacks so far is because the Commissioner's process so far has effectively denied people the opportunity to challenge an approach which would deny people the rollback.

I'd like to introduce now Conway Collis, who will explain the exact purpose of the lawsuit we filed yesterday to try and take the process that has begun to destruct Prop. 103 and put it back on track.

CHAIRMAN ROBBINS: Thank you. With brevity, please.

MR. CONWAY COLLIS: Mr. Chairman, I think this might proceed productively and come out with a productive result if we might focus on the major points contained in the lawsuit filed yesterday in Sacramento Superior Court by Voter Revolt -- the authors of Prop. 103 -- by the Prop. 103 Intervention Team, which I chair, by the Los Angeles Chapter of the NAACP, and by the Center for Public Interest Law in San Diego.

I think that all of us involved in this suit were saddened that it became necessary. And frankly, we would hope that the major points contained in the suit could be resolved without having to proceed with litigation.

If in fact the Commissioner would agree to immediately proceed, and not promises but action, to immediately proceed to implement the major points contained in that legislation, I think that that would be a very productive result from these proceedings.

If I might, let me list those points and ask the Commissioner if she would agree to those aspects, which are the foundation of the implementation of 103.

First, will Commissioner Gillespie agree to stop using the 11.2 percent (quote) "fair rate of return" (unquote) standard for any regulatory action utilized by the agency?

SENATOR DAVIS: Mr. Chairman? As a matter of procedure, I would like to suggest that we not allow one witness to cross-examine another, that anything like that should be done from the Chair.

CHAIRMAN ROBBINS: Yes, Senator Davis. Four times during the previous hearing I made it clear that questions weren't allowed. I was about to do so. The procedure to be followed will be that questions will be -- if you have a question to direct to the Commissioner, state the issue that you want questioned, and I think we'll move the hearing along quicker in that manner.

MR. COLLIS: Mr. Chairman, thank you for correcting me. The questions that I believe need to be answered for Prop. 103 to be adequately implemented, and that I hope that the Commissioner will be asked to address by the Chair, are as follows.

First, will the Commissioner agree to stop using the 11.2 percent fair rate of return standard that she has adopted, and adopted without any reference to the Administrative Procedures Act or the protections of 103?

Second, will the Commissioner agree to notify all of the insurance carriers that have filed for exemptions for the mandatory rollbacks, will she agree to notify them that no actions having been taken by the Department of Insurance or decisions made by the Department of Insurance have any legal effect with regard to those exemption applications, and that those applications are still pending? Specifically, the Commissioner has exempted 184 companies based on that 11.2 percent standard, a standard that she has now said she will no longer utilize in the hearings now going on.

Third, will she immediately begin the formal process of adopting standards concerning the fair rate of return, as well as the accompanying regulatory and accounting methodologies, so that the hearings now scheduled and the remaining hearings that need to be scheduled can proceed in a lawful and organized way?

Will the Commissioner agree to notice timely hearings with specified dates for all insurers, which are the subjects of petition for a hearing by the Intervention Team or the Attorney General? The Commissioner has indicated in a press statement that she will notice such companies. We, however, need formal regulatory action, not press statements.

Finally, will the Commissioner agree to begin the formal legal process of adopting regulations implementing Section 1861.02 of Prop. 103, which is the section that mandates that we move away from the territorial rating system -- a rating system which has had a discriminatory impact in many sections of Los Angeles -- that we move away from that system and base people's rates upon the factors mandated by Prop. 103, which include driver's own safety record, annual miles driven per year, and our years of driving experience, and then following those mandatory factors, any other factors that can be proven are related to the risk of loss?

That is a process, Mr. Chairman, that is mandated by the Administrative Procedures Act, it is mandated by Prop. 103, and despite the fact that we have had so-called preliminary or informational hearings in the nature of press conferences by the Commissioner around the state, the formal process of implementing regulations and adopting regulations has not yet begun, and those formal processes are the ones that provide consumers the protection of law. Will the Commissioner agree to immediately begin those formal hearings?

I hope that those are the questions that can be addressed today. Thank you.

**CHAIRMAN ROBBINS:** We took a little longer on those that I might have liked, but I think we have stated what are some of the basic issues that need to be dealt with.

Let's start with what is probably the number one question on the minds of the voters. The voters, when they passed Prop. 103, intended one thing: They intended to get lower rates. They intended for the Legislature, the Insurance Commissioner, and the insurance companies to do whatever was necessary to achieve that objective, especially in the area of auto insurance where many people -- myself included -- feel that if you tell someone who's a wage earner that they have to pay \$2,000 a year for auto insurance, that they're going to look at you like you're crazy, because at



that point it becomes a question of whether they can put food on the table or an insurance policy in the car.

The most important question then is when. We have talked at the last hearing about when the rate hearings would be concluded. It has now been nine months since Prop. 103 was passed by the voters. It hasn't been nine months since Prop. 103 was passed by the voters?

COMMISSIONER GILLESPIE: Let's remember that Proposition 103 became effective June 3rd. Let's never forget that. There has been such misinformation about that. Until June 3rd, there was nothing that we could get started on the rollback. That provision was stayed, Mr. Chairman. Please remember that.

CHAIRMAN ROBBINS: There was no stay from the California Supreme Court to preclude you from thinking. There was no stay from the California Supreme Court to preclude...

COMMISSIONER GILLESPIE: Now, wait a minute. If you're going to start like that, that's not going to be a very nice hearing, please. I have been thinking all along and working extremely hard, and I have not been getting much help from some people, but thank goodness, I've been getting a lot of help from others.

And what must have become totally obvious is that what we have here today is a splinter group -- a splinter group who refuses to be accountable for what they have done. We have a whole other group that is working on all of these things that are being covered by the lawsuit, and all of these things are being worked on right now by everybody else. Apparently, these folks would rather do what the insurance industry does and sue. But lawsuits don't lead us anywhere and they don't make things happen. We've got to work together and we've got to think together. We can't go off in our separate directions and be rhetorical. We really have to work together.

CHAIRMAN ROBBINS: There's no question that we have to work together. The question is: For the concern of the people who pay for their policies, do I correctly understand that now there are going to be hearings on all of the companies? When will the hearings -- by what date will those be completed? Initially it was announced that all of the hearings were going to be completed by November 8. Are they going to be able to be completed by November 8? If not, by what other date will they be completed?

COMMISSIONER GILLESPIE: Everything will be started well before November 8th. Now, unfortunately, Mr. Chairman, although we have already set the dates for all the hearings, we don't totally control the process. There's a lot of foot dragging that can happen and there's a lot of molasses that can be placed in our gears by people who don't like to be accountable. And all I can tell you is that the Department of Insurance has set dates, that all the hearings have been set prior to the end of the year, and the process will be well, well underway, and certainly from the standpoint of the administrative agency of the Department of Insurance, will be largely over before the actual prior approval period starts.

CHAIRMAN ROBBINS: State Farm Insurance is the largest insurance company in the state. What is the date that has been set for their hearing?

COMMISSIONER GILLESPIE: I will be glad to have my staff provide you with a calendar. I

don't happen to have it before me, but I will make sure that my staff provides you with a calendar.

CHAIRMAN ROBBINS: You have four members of your staff with you and none of them knows the date in which the State Farm hearing is going to take place?

COMMISSIONER GILLESPIE: We will provide you with a calendar, Senator. We did not know that a calendar was necessary here today, but I will -- if I manage to have one within this morning, I will ask people to do their best and give it to you this morning. There is a calendar.

CHAIRMAN ROBBINS: But all of the insurance companies will have hearing dates set this year. I'm not try to put words in your mouth. I'm trying to make certain I correctly understand what you said a moment ago.

COMMISSIONER GILLESPIE: What we are having is the following routine, as I mentioned to you as at my opening statement. We have 13 of the biggest and most profitable up front. We have the four largest. All of that is going to be done before November. We have a large, very large hearing consisting of 257 remaining companies. That has been set, I believe, for early November, and because of the number of respondents, it has been set for the Oakland Coliseum.

Now, this is the schedule at this point, and I am going to make sure that you get the calendar.

CHAIRMAN ROBBINS: The second question -- well, let me give Voter Revolt a chance to comment on the question of timing and then...

COMMISSIONER GILLESPIE: Senator, can I just -- my staff has just pointed something out. There is actually -- there are dates in the handout, apparently.

CHAIRMAN ROBBINS: State Farm will be October 26 and 27. Okay. Voter Revolt on the question of scheduling.

I do have to say with candor that I think the Commissioner has substantially improved on the scheduling since our last hearing when the most specific response I could get was a statement that it probably would be completed -- the hearings would probably be completed some time this century.

MR. ROSENFELD: Well, we feel that that's an improvement too, Mr. Chairman. However, perhaps the Chair could ask the Commissioner, what about the 183 companies who've been exempted by a standard that none of us had an opportunity to challenge, discuss, or oppose? Those are companies which are now forever foreclosed from having to give the rollback that the people are entitled to. Are they going to be rescheduled? Are they going to be back on the table so we can then proceed to challenge the formula by which they were exempted?

CHAIRMAN ROBBINS: Okay. We'll get back to that point.

SENATOR JOHN DOOLITTLE: On that point, Mr. Chairman?

CHAIRMAN ROBBINS: Senator Doolittle?

SENATOR DOOLITTLE: If I heard correctly, 70 percent of the people aren't going to get any rollback at all. They're going to get a substantial increase. In my district, which is in Northern California, the people voted 2 to 1 against Proposition 103, and we see figures of anywhere from 20 to 57 percent increases, depending upon the counties. I mean, I really wonder who is this suppose to benefit from all of this? Both the intent and the implementation of Proposition 103, I think, may be fairly subject to question here.

I think it's unrealistic to talk about cutting the costs of insurance without looking at what the factors are that go into those costs. Simply passing a statute to roll it back without taking into account all of the factors that make up the costs is unrealistic.

The implementation has been fraught with delays, with -- well, I think there's been a certain feeling of insensitivity even about it. Roxani Gillespie, rightly or wrongly, has been portrayed as the Leona Helmsley of the insurance crisis. And the idea that only insurance companies are entitled to a break at the expense of the rest of us.

Now, I think that's an unfair characterization of the Insurance Commissioner. We've had a mess here that's been produced. You know, you gentlemen, I guess, were some of the primary sponsors of 103, and now we see that the figures are being mentioned, the increase may go to great lengths in order to reduce the tariffs for some people. I think we ought to get some questions answered at this hearing.

I'll tell you this, we do know Proposition 103 has passed, and yet the only good news is for the insurance companies. No one else has gotten any good news, and I think we need to resolve those issues.

I'm encouraged at the Commissioner's remarks this morning to hear the hearings have been set, they're going to look into this. I'm a little disturbed by your remarks that somehow we've got to sacrifice the interest of 70 percent of the people in order for 30 percent to be met. I'd be interested in resolving that issue, Mr. Chairman.

CHAIRMAN ROBBINS: Harvey, no one said your seat wasn't going to get a bit warm this morning.

MR. ROSENFELD: Well, Senator, the people of California disagree with you. In our democracy, which is where we are in California, the majority rules, and the majority of the people in California voted for Proposition 103. The purpose of this hearing today is to discuss why it's not being implemented correctly and how we can fix that.

As for the issue you raise about figures of 70 percent increases for the people in your district, that's because of a phony study that was released by the Commissioner -- a study which we could make the subject of a question here today, which I think would be useful, so that we can correct the misimpression that you have and perhaps some of your constituents have as well.

If you like, Mr. Collis has actually analyzed that study and some of the data on the territorial issue, if you want to get into that...

CHAIRMAN ROBBINS: Very briefly, because I want to move on to the next point.

MR. COLLIS: Senator Doolittle, I think that your question illustrates the degree of misinformation in this area, and it's misinformation that's been greatly added to by the kind of press conference type hearings that the Commissioner held around the state, including at least near your district, just a few weeks ago.

The fact is that once you look at the evidence -- not the political rhetoric -- but you look at the evidence, which we have done, and it is the only evidence on the public record -- the only evidence -- that evidence suggests -- and we hired a statistician from USC to actually go through the

data from the companies, data that would not have been available if we had not requested it -- and it shows that although territory -- which you indicate a concern about -- a low territory appears to be a somewhat reliable predictor of the risk of loss. It is not in fact, the data suggests, suggests that it is not in fact as important a predictor of the risk of loss as are the factors mandated by Prop. 103: our own driving safety record, how much we drive a year, and our years of driving experience.

The problem, Senator Doolittle, is that the companies are so used to relying on territory that it's been very, very difficult to get them to focus on the fact that what's been happening in California is that good drivers everywhere, including in your district, have been subsidizing bad drivers everywhere, including in your district. And the evidence suggests that that is what's been happening, rather than any kind of a necessity to rely on territory.

But this whole discussion is an indication of why I think the Commissioner needs to answer one of the questions raised by the lawsuit filed yesterday, which is that if she will begin the formal hearing process that is mandated by the Administrative Procedures Act, that's mandated by Prop. 103, we will begin to develop the evidence on issues like territory. If the companies can prove that they need to use territory, that it's valid and important, Prop. 103 allows them to do so but only if necessity is proven. That can only happen as part of the formal hearing process, and that process should begin.

CHAIRMAN ROBBINS: I'd like to move on to the question of rate of return to the insurance companies. The higher the rate of return to the insurance companies the more people have to pay in Los Angeles, the more people have to pay in Northern California, the more they have to pay throughout the state.

You've issued a preliminary finding to allow insurance companies an 11.2 percent rate of return. The 11.2 percent rate of return is based upon an historic rate of return. It basically says that it would allow insurance companies to continue to make the same type of profits under Prop. 103 that they made in the past.

At the previous hearing there were a number of questions raised of how the 11.2 percent return was developed. The primary indicia it was based on was that was the average rate of return on successful financial institutions.

COMMISSIONER GILLESPIE: No, wrong.

CHAIRMAN ROBBINS: Okay. Why don't you tell us how was the 11.2 percent return developed, why a decision was made to effectively guarantee a rate of return of that size, and why savings and loan institutions were left out of the computation.

COMMISSIONER GILLESPIE: There is a very good reason why savings and loan institutions are not a very good bench mark. I would think -- I am rather shocked that this would even come up. But let me correct the misinformation again, and I'm very chagrined that it appears that the members of your staff have not taken the trouble to explain to you what the Department of Insurance has actually been doing, because the 11.2 bench mark is the subject of the hearings and it is the subject of the work that is being done today by consumer groups, by the Attorney General's office, the Department of Insurance, and insurance companies. This is what we're all working on. The 11.2 percent is a point

of departure, and we are working around it in order to formulate what should be the right rate of return. And all voices are represented. All voices except some who refuse to be a part of the process and become accountable in this process. And there have been a lot of things that have been said today that are incorrect.

For instance, that the companies that allegedly have been left out. Mr. Rosenfield says he wrote the law but apparently he cannot read it. There is clearly in the Proposition a provision that says that anyone can bring a hearing regarding a rate at any time. Mr. Rosenfield, if he has any kind of chagrin about anything, can come before the Department and present his case.

There has also been an allegation that the Department of Insurance has not started formal procedure with regards to the rating criteria. But apparently, again, the gentleman that is helping Mr. Rosenfield is not very familiar with the administrative procedure, because in view of the timing involved, what we are doing is emergency regulations and emergency regulations have had hearings already. We have had a total of nine dates of hearings. And after the emergency regulations have been filed with the Office of Administrative Law there will be more hearings.

Again, misinformation and lack of wanting to be a part of the process and work with the rest of us. The rest of us, believe me, are working today on exactly the issues that are being raised at this hearing.

CHAIRMAN ROBBINS: Mr. Collis.

MR. COLLIS: Mr. Chairman, I think that it's important that we try to focus this hearing on the facts and not rhetoric. The facts are these: The Commissioner indicates that the 11.2 percent number that she mysteriously came up with is a point of departure. Based on that (quote) "point of departure" (unquote), the Commissioner has exempted 184 insurance companies in the State of California from any rollback, from any hearing, from any scrutiny whatsoever. So that either that 11.2 percent is a firm figure that has been legally developed upon which companies can be exempted, or it is simply a point of departure and the Commissioner ought to immediately commit at today's hearing to call hearings on those 184 companies that have been automatically exempted by her 11.2 percent number.

Second, as someone that is also a regulator/administrator of the state tax system and thus am familiar with the requirements of the Administrative Procedures Act, when an agency adopts emergency regulations, which the Commissioner has indicated now that she is going to do, those emergency regulations have been, she would claim, necessitated by the fact that she didn't begin the process of developing regulations nine months ago.

This part of Prop. 103 was not stayed by the California Supreme Court. The process of beginning to think through this could have begun, and the fact is that it is only the legal process of doing this that provides consumers protection from the Commissioner's arbitrary actions. And that process should begin and the Commissioner should not hide behind the shield of emergency regulations. And I don't believe that this committee should allow her to do so.

SENATOR DAVIS: Mr. Chairman?

CHAIRMAN ROBBINS: Senator Davis?

SENATOR DAVIS: I'd like to ask the witness, didn't the California Supreme Court say that the wording of profitability had to be different than the initiative, that it couldn't be that you had to go broke, that you were entitled to a fair rate of profit? Didn't that come down on what, June? Is it June the Supreme Court decision came down? So you continue to go back improperly to November.

Let me ask you, in reading the papers this morning, are you a candidate for Insurance Commissioner?

MR. COLLIS: Which question did you want an answer to?

SENATOR DAVIS: Why don't you answer the last one first. Are you motivated now by the fact that you appear to be a candidate for the Democratic nomination for Insurance Commissioner in California?

MR. COLLIS: Senator, I am motivated by one thing, and that is that it is clear, as was indicated by the four consumer and civil rights groups that were forced to file suit yesterday, that California consumers are not receiving the benefits mandated by Prop. 103, and it has apparently been necessary to take the Commissioner to court in order to make sure that consumers receive the protection mandated by law. I am motivated by one thing, and that's to try to see that California consumers receive the rollbacks that they're entitled to under 103, and that they receive the protections of the way that rates are going to be set that are mandated by Prop. 103. None of those things are happening, and I am prepared to do whatever is necessary to try to get 103 implemented, including filing suit in Superior Court in Sacramento yesterday.

SENATOR DAVIS: Are you a candidate -- are you likely to become a candidate for the Democratic nomination for Insurance Commissioner of California?

MR. COLLIS: Senator Davis, this is a hearing to discuss the implementation of 103 and I...

SENATOR DAVIS: Well, I think this is a kickoff of your campaign. I wish you'd honestly answer whether you are entertaining a strong possibility of running for Commissioner of Insurance in California. You're getting a platform here in front of us and you haven't been forthcoming at all.

MR. COLLIS: Senator Davis, I am not going to discuss that today because I don't think it's the topic of this discussion, and frankly, I don't think it's very relevant right now to the people of California. I think what people need are 103 being implemented. I think that the voters and the consumers in your State Senate district would be best served by your focusing your attention on Commissioner Gillespie's implementation or lack thereof of Prop. 103.

CHAIRMAN ROBBINS: Let me...

SENATOR DAVIS: Mr. Chairman, if I might finish. I have no intention, if I have anything to do with it, of having affairs like these where every person who wants to run for Insurance Commissioner in California, including Republicans.

CHAIRMAN ROBBINS: Let me say that I think what I would like to do, as much as possible, focus on the issues. Obviously, we have one or two or three people in the room, present company definitely not included, who may be candidates for election or reelection to the position of Insurance Commissioner in 1990. However, I'd like to focus on the implementation of Prop. 103 in 1989...

SENATOR DAVIS: Mr. Chairman?

CHAIRMAN ROBBINS: ...and toward that direction...

SENATOR DAVIS: If the witness could go back and answer the question that is it true that the California Supreme Court defined the profitability phrase in their June decision. Is that true? How can you then charge that she should have been doing this back in November? You're a lawyer. I don't understand how you can make statements like that.

MR. ROSENFELD: Would you like Mr. Collis to respond to that?

MR. COLLIS: I'll be happy to respond. Senator Davis, I was referring to 1861.02, as I specifically stated, that had not been stayed by the Supreme Court. That is the section that redoes the way our rates are set in California. That does not relate to the profitability of an insurance company. That section, Senator, if you look at the language, that is the section that mandates we move away from a territorial rating system and that we utilize, in descending order of importance, driver safety record, annual miles driven, and years of driving experience in setting people's rates. That's the section that I was referring to, with regard to profitability of the companies.

SENATOR DAVIS: Well, profitability undergirds all of those rates, according to the Supreme Court. And regardless of what the criteria is, it says 103 doesn't force someone to lose their company in order to meet these rate rollbacks, but they're entitled to a -- I forget the exact words -- to a fair rate of return.

MR. COLLIS: Senator Davis, it may be that we're able to reach some agreement on this point, and I think that would be useful, because it would be helpful, I think, if you added your voice to mine and others in addressing -- asking the Commissioner to address herself to this point.

The California Supreme Court said that companies could be exempted from the mandatory 20 percent across-the-board rollback if that rollback would be confiscatory, if it would deny them a fair rate of return.

SENATOR DAVIS: Right. Right.

MR. COLLIS: And it is for that reason, Senator Davis, that it is so critical that in adopting what the standard is going to be, to determine whether the rollback would be confiscatory, whether it would deny a company a fair rate of return, that's the reason it is so important that that standard, that constitutional standard, is set not by administrative fiat, not from pulling out of the air a mysterious 11.2 percent figure and exempting all kinds of companies from it and then coming back and say, "Well, the 11.2 percent figure is only a starting point." That's the reason it's so important that that number be set based on public input, public hearings -- the formal legal process that is set out in the Administrative Procedures Act -- that's the reason for the Act, Senator Davis -- that is set out under Prop. 103.

The reason that we are trying to get the Commissioner to commit to begin the process of setting that standard so that it can be applied to the companies that are now being reviewed, to the companies that because the Intervention Team and the Attorney General filed against at some point going to be reviewed, and that those 184 companies that have been automatically exempted by the Commissioner's action be brought back into the process. Let's establish what that constitutional standard is before we go off without any standards and without any guidelines.

SENATOR DAVIS: What do you think it should be? Five percent? Six percent? One percent?

MR. COLLIS: Senator Davis, in setting a standard for the rate of return, we've got to figure out what expenses are that can be allowed and how you determine them, and we've got to figure out what insurance company income is and how you determine it, including whether you simply look at -- let's face it, the companies depend heavily on investment income, including capital gains. Let's be sure that we're fully factoring in investment income. Then once we decide that, once we know what the expenses are that are going to be included, and once we know what the income is going to be, then we can move forward and determine a fair rate of return for an efficient insurance company. But until we do that, Senator, whether you say 11 or 12 or 15 percent rate of return, it's meaningless because we don't know if it's 11 or 12 or 15 percent of what.

SENATOR DAVIS: Do you understand what percentage of California auto insurers are mutuals, that are not-for-profit companies, that must -- any profit goes back to reducing the policy? Do you have any idea what percentage that is?

MR. COLLIS: Senator Davis...

SENATOR DAVIS: Either a yes or no. Can you answer this?

CHAIRMAN ROBBINS: Senator Davis, I think it's a question that can easily be answered in the true sense of the word of what a true mutual is. There are no true mutuals in California because what happens is in the case of the companies that operate as mutuals is that essentially the profit is paid out in the form of executive salaries. There is no true mutual operating in California, with the possible exception of the Auto Club, which comes the closest. Certainly State Farm, even though they have the word mutual in their name, is not a mutual in the traditional sense of the term.

SENATOR DAVIS: Well, these companies are not owned by stockholders. They're mutual operations that don't make a profit per se. And whether State Farm or Farmers or Auto Club of Southern California or Auto Club of Northern California, and many others, more than half the auto insurers are not-for-profit operations. And so it's interesting a candidate that doesn't understand that fact.

CHAIRMAN ROBBINS: Senator Davis, I think it's a question of how one would interpret what a mutual is. What I'd like to do is to move on to -- we've discussed the question of rate -- the 11.2 percent. Obviously, some of us feel it's too low and some of the insurance companies feel it's not high enough. Pardon me, some of us feel it's too high.

COMMISSIONER GILLESPIE: And Ralph Nader feels it's too low.

CHAIRMAN ROBBINS: Pardon?

COMMISSIONER GILLESPIE: Ralph Nader feels it's too low. He'd like to see 12 or 15 percent. So what I really think would be much better to the point than a rhetoric, again, is for the group that is here today to join the rest of the group, and let's hear their voice in terms of what they think is correct, and as was said, you know, a percentage of what? Let them join us and give us their opinions as part of the process.

CHAIRMAN ROBBINS: Well, let me use that to move into the next area, which is the question of formal guidelines. We do not have a set of written guidelines, or formal guidelines, of what is to



be allowed. What's happening is you're using a concept of basically evolving guidelines of holding the hearings first, determining the rate hearings on a case-by-case basis, rather than adopting formal guidelines.

If there were formal guidelines, then as each hearing is held, the members, the media, the members of this committee, the general public, the consumer organizations could evaluate whether or not each rate decision conformed to the guidelines.

Why no written guidelines? Why no formal guidelines? Can we get you to agree to a date by which you will adopt formal guidelines so we can determine if each of the rate hearings complies with your guidelines or not?

COMMISSIONER GILLESPIE: Mr. Robbins, I am sorry, but again, you have been misinformed as to what the law says. If Mr. Rosenfield wanted something that had the Department of Insurance adopt regulations in this area, he should have put it in Proposition 103. He did not put it in Proposition 103. So what we have done is we have set hearings for the largest, for the most profitable insurance companies, trying to get rollbacks to consumers just as rapidly as we possibly can, and that has been our process. And what we are doing through that process is establishing the rules that we will be using throughout, as I say.

If the proponents of the Proposition wanted a rate-making mechanism as part of this procedure, they should have said so. They didn't say it. And what we're doing is we're setting the hearings in order to establish the rules at the same time and provide consumers as rapidly as possible with whatever rollbacks we can in accordance with the Supreme Court guidelines. It's very simple. It appears that no one reads Proposition 103. I am very, very confused.

CHAIRMAN ROBBINS: Commissioner, I read Proposition 103, I can assure you, from cover to cover several times and I suspect Mr. Collis and Mr. Rosenfield read it...

COMMISSIONER GILLESPIE: And it's not very long and it's not very complicated.

CHAIRMAN ROBBINS: ...many times more than I have. But in any administrative process -- the way this committee runs, the beginning of the year we adopt rules. Everyone knows what those rules are, so if as chair or any members of the committee, if we violate the rules, anyone can see what violation's been done. If you don't adopt formal guidelines of what's happening with the rate hearings, there is no way anyone can determine whether or not a particular company is being given favoritism, being treated better than another company unless they wait until the whole process is over, and then it's too late to deal with that individual company.

COMMISSIONER GILLESPIE: Senator, you, I guess, have not been following the process. But the guidelines are being...

CHAIRMAN ROBBINS: I thought I've been following it fairly closely.

COMMISSIONER GILLESPIE: Well, maybe not. We would really welcome a member of your staff to come and work with us on all of this, because what has been happening is that Proposition 103 does not give the Department of Insurance rule-making authority in this process. And the way that we are going to be establishing the rules, which you very correctly state are very necessary, is through the hearing process, and that is happening today.

As I have been saying over and over again, consumer groups, Insurance Consumers Action Network, Consumers Union, Public Advocates, the Department of Insurance, the Attorney General, lawyers for the insurance industry, they're all there determining these rules that we will be using through the hearing process as we go along. That is the best we could do with the law that we have.

We have been authorized to hold hearings. We have not been given rule-making authority in this regard. And that has been the difficulty. So we are using the hearings to establish the rules, and the rules are being worked on today.

CHAIRMAN ROBBINS: At some point are the rules going to be reduced to writing so that they can be distributed to everyone?

COMMISSIONER GILLESPIE: What we have right now is a questionnaire, and I will ask Reid McClaran of our Rate Enforcement Bureau to provide your staff with a questionnaire, which is still in draft form, because it's looking for input from everybody -- from the consumer groups, from the insurers, from everyone that wants to provide input. This is a very, very open process. And this is what is going to be the basis of these rules. So we will provide you with that questionnaire so that you can see the progress that is being made.

CHAIRMAN ROBBINS: When you get the questionnaires back are you going to adopt written guidelines?

COMMISSIONER GILLESPIE: The questionnaires will be used as standards for the hearings. Again -- again, Senator -- the Office of Administrative Law is very clear in the way that it does its duty. If a state agency does not have authority to go ahead and make regulations, the Office of Administrative Law does not permit us to make regulations. We have to use the process that we have, and the process that we have is a hearing process. And what those rules that are being developed will be will be rules that will be used effectively throughout the hearing process. They will be developed through the hearing process and by the time we reach the magnum hearing in the Oakland Coliseum, hopefully there will be very few issues left, but the extent to which they can be applied to the specific companies.

CHAIRMAN ROBBINS: Will they be in writing? Will those rules be in writing?

COMMISSIONER GILLESPIE: Of course they will be in writing. We don't have a capacity to do anything else. I mean, you know, the days of oral history are long gone. Everything has to be in writing now.

CHAIRMAN ROBBINS: Okay. By when will they be in writing? A date.

COMMISSIONER GILLESPIE: It will depend on, you know, on how well the process goes. It's underway today, and the moment we know more we will be glad to let your office know.

CHAIRMAN ROBBINS: Not as specific as I might like, but I will give two minutes -- do you understand what's going to happen with respect to the written guidelines?

MR. ROSENFELD: Mr. Chairman, I think I finally found an area of agreement with the Insurance Commissioner. A few moments ago she said she is confused. I agree with her, she is confused.

The Commissioner may not understand perhaps because of her inexperience as a regulator in a

typical regulatory state, which 103 has made California, that the Administrative Procedures Act, another procedural requirement of California law, apply.

Now, the Commissioner has intimated that we're not somehow cooperating in a process, and that there are other people who are. In fact, the problem is we can't find the process because there isn't really one. On July 17th, Voter Revolt, Proposition 103 Intervention Team joined the Attorney General and a number of other consumer groups proposing that a formula be established by which each of these companies could be analyzed. A formula that would actually look at their expenses, their investment income, and various other ways in which insurance companies tend to hide their profits to make it look as if they're losing money when in fact they're raking it in.

The Insurance Commissioner has rejected that approach. Her approach is to put the cart before the horse by trying to evolve the rules of the game while you're playing the game, and particularly when one side has 500 players and the other side has a handful.

What we have requested and been rejected upon, and what this lawsuit now demands, is that we establish rules of the game before you begin the game itself; otherwise, as the Commissioner understands, by the time we get to Oakland Coliseum, there will be 400 different formulas evolved on a case-by-case basis, and all the companies will be able to complain that the formula applied to them discriminates against them because it was different than the one that was applied to company 150. This process the Commissioner has established will result in no rollbacks for anybody, and it will all end up in a massive lawsuit brought by the insurance companies.

That is why we are attempting to work out, through the courts, because there seems to be no other way, a reasonable method contemplated by state law and written right into 103 so that the public can have input in determining what the rules of the game are, and then we can go forward and play the game.

SENATOR DAVIS: Mr. Chairman?

CHAIRMAN ROBBINS: What I'd like to do is to take a four-minute recess, and when we come back the subject will be territorial rating.

SENATOR DAVIS: Can I ask one question on this subject?

CHAIRMAN ROBBINS: One very, very quick one.

SENATOR DAVIS: Do you wish you had given direct rule-making authority to the Commissioner in 103?

MR. ROSENFELD: Let me be explicit. Senator Davis, it is not necessary to give that rule-making authority to the Commissioner. California law requires that whenever any government agency takes action it must be in compliance with the Administrative Procedures Act, and the Supreme Court specifically said that the Commissioner has the authority to consolidate these hearings and deal with these hearings...

SENATOR DAVIS: Can they make rules?

MR. ROSENFELD: Yes! Yes!

SENATOR DAVIS: The Supreme Court?

COMMISSIONER GILLESPIE: No, no.

MR. ROSENFELD: Yes.

COMMISSIONER GILLESPIE: It said consolidate. It never said you make rules.

MR. ROSENFELD: The Supreme Court didn't need to have to. It did not need to say you can make rules because California law permits it, and indeed requires it of government...

CHAIRMAN ROBBINS: All I can say, Commissioner, is that if California law authorizes you to make the rules in writing before the meeting in the Oakland Coliseum, it authorizes you to make the rules in writing now, and the sooner you make it, the easier it would be for everyone to keep track of whether the decisions comply with the rules.

COMMISSIONER GILLESPIE: That's what we're trying to do but we're trying to do it in accordance with the Office of Administrative Law and the way that they interpret the California law, which seems to be totally different from the way Mr. Rosenfield does. What can I tell you? I'm sorry. And, you know, obviously Mr. Rosenfield has a lot of experience in insurance, but I am afraid that what has happened is that he is now faced with a mistake that he made when he sponsored this, and the rest of us are here and we have to deal with it.

One of the consumer groups said in one of our hearings that what has happened in California as a result of Proposition 103 is Beirut, and it's true. That we're in the middle of. We're in the middle of Beirut. And you know what the problem is? The problem is that the hostages here are the California drivers, and that is the big morass that we're in because, unfortunately, what we have is a process that was not passed upon by the Legislature but was done by some people that simply don't understand either insurance or administrative law. That is our problem and we have to deal with it.

CHAIRMAN ROBBINS: Four minutes and when we come back, territorial rating.

(BREAK)

CHAIRMAN ROBBINS: ...ask everyone to please begin moving in the direction of their seats. If I could ask members of the audience please take seats. We've been joined by -- we have two members of the Assembly -- Assemblyman Bob Epple, Assemblywoman Gwen Moore, who is joining us and who's going to take the neat seat by Senator Doolittle if she wishes.

Subject is territorial rating, and indeed, the subject is of great significance because we have a current insurance system that based merely on where you live has people in certain areas paying double to triple what is paid by people in other areas.

I'm going to start on this one with the Prop. 103 people and ask you the first question. What did you intend? You wrote Prop. 103. With respect to the question of territorial rating, what was the intent?

MR. ROSENFELD: Proposition 103 changes the prior system in effect which forced good drivers in every neighborhood in California to subsidize bad drivers in the same zip code. That system made no sense legally, it made no sense actuarially, and most fundamentally of all doesn't give people the chance to determine for themselves what their automobile insurance rates are going to be.

So 103 requires automobile insurance rates to be based first, on the driving safety record; number two, on the miles driven annually; number three, on the individual's years of driving

experience. These are three factors that are mandatory; they're statutory, they're in decreasing order of importance, and they give drivers the best opportunity to take control of their own auto insurance rates.

Now, 103 said that any other factors that may be proposed that have a substantial relationship to risk of loss can be considered as lesser priority but only after public hearings and regulations issued by the Commissioner which approve them.

The concern we have had has always been that if there are legitimate geographic differences, that should be determined after the insurance companies open up their books and provide the data to justify where territory would fall in.

Our major complaint about the way the Insurance Commissioner has proceeded is she has wandered around the state, using a study which is not in compliance with Prop. 103 nor based on the requirements of the law, to terrify the public into believing that 103 will increase everybody's rates in almost every county except for Los Angeles. We have finally obtained the basis for this study -- I have it here for the committee. It consists of a simplistic averaging of territories throughout the state that does not comply with Prop. 103 and is not reflective of what is required by 103.

The companies have been asked, and in fact, the Insurance Commissioner has ordered the companies to provide us with the data which we could use to determine such weights and appropriate other factors, but the companies really have not complied.

CHAIRMAN ROBBINS: Commissioner, you've just heard Mr. Rosenfield state what the intent was with respect to territorial rating. You have had the opportunity to hold, I believe, it's five -- was it five hearings around the state?

COMMISSIONER GILLESPIE: Nine.

CHAIRMAN ROBBINS: Nine hearings around the state on the subject. Those hearings have given you an opportunity to get probably more input than you ever wanted on the subject. You've had a chance to review it. It's not a new subject. It's certainly something we've all looked at for years.

The question on the minds of the people who have to pay for auto insurance is what's going to happen? I would appreciate it if you'd tell the committee what is your policy going to be. As you implement Proposition 103 on territorial rating, are you going to use statewide rates? Are you going to use regional rates? Are you going to use zip code rates?

COMMISSIONER GILLESPIE: What you just heard from the proponent of the Proposition is not really an answer to your question, I don't believe, because what you asked is what is the intent of Proposition 103, and what I heard was well, the rates should be determined differently. But what I heard the voters say, what I heard the voters say very clearly and therefore I think that is the intent of the Proposition, is that everybody's rates should go down. Not just some people at the expense of some other people. And unfortunately, Proposition 103 does not give us the tools to bring the rates down across the board, which I believe is what voters asked for.

So on the one hand, we have the proponents which have never provided us with any type of information in terms of what they believe the effect of what they have written down in the law might be as far as the average people, because that's what we're talking about. We're talking about you and

me and everyone driving all over the state and what is going to happen to us? Not theories, facts. And we have never received anything like that from the proponents of the Proposition.

What we did hear up and down the state is that people who are currently being charged very, very high rates would like to see their rates go down. And people who are afraid that they might end up paying more because of the fact that others might see their rates go down are very, very angry in terms of having the possibility of having that happen.

And that is, Senator, where the Legislature can come in, because Proposition 103 is going to make it very, very necessary for us to bring about the reforms and continue the job that the Proposition has started in order to bring the rates down for everybody. We need to eliminate the fender-benders, we need to eliminate the lawsuits in the small cases, and until that is done, you haven't seen anger on the part of the public yet as what is going to be in store for us. This part of the Proposition is the toughest, is the hardest, it's the most wrenching.

CHAIRMAN ROBBINS: There is no question it's the hardest, and there's no question it's wrenching. The question is what are you going to do? I'll summarize what they said. Their intent is to get away from territorial rating, to concentrate on other factors -- driving record, number of miles driven, experience. The question is: Are you going to reimpose some type of territorial rating system as part of what you do?

COMMISSIONER GILLESPIE: What we will do is we will bring our regulations into the public very, very quickly. Our big difficulty right now, as we are formulating these regulations, because, you know, formulating regulations is an easy thing, but what we're sitting here doing is really absolutely agonizing of what the effect of the regulations might be.

We have the Supreme Court that told us that insurance companies are protected. And how can we get around that? Is there any way that we can get around that if we proceed with regulations that change the current system? How are we going to tell people across the state that all of a sudden their rates are going to go up? Insurance companies are protected by the Supreme Court. Who is going to protect the policyholders?

Mr. Chairman, the Legislature has to protect the policyholders by bringing down the cost of claims so that everyone can see relief. The territorial issue is going to be just a horrendous one in California unless the Legislature moves to complete what Proposition 103 has started.

So you're worried about the timing of the regulations. What I'm sitting here worrying about is the effect that the regulations is going to have on the people.

CHAIRMAN ROBBINS: Madam Commissioner...

COMMISSIONER GILLESPIE: You laugh.

CHAIRMAN ROBBINS: ...no member...

COMMISSIONER GILLESPIE: I can't tell you how hard this is.

CHAIRMAN ROBBINS: No member of the Legislature has put in more time trying to bring down the overall cost of insurance this session and sessions before than myself. I've been going back and forth furiously in the last week to two weeks negotiating with the Speaker, with the Governor's office, with consumer organizations to try to put some legislation together, and we think that we've

got a shot at next week getting -- you know, we're not going to get something through that's going to cut the cost by 40 percent or even 30 percent, but we've got the prospect of putting together a package of legislation to put together potentially something that might be a 15 percent cost reduction. Any reduction is certainly going to be helpful.

The question that you have to tell us is apart from the question of what can be done to bring down the overall cost, which we all have to work on, are you going to reimpose territorial rating? You know, you have Mr. Rosenfield and his group saying they don't want you to, and they're going to tear you apart verbally if you do. You have Senator Doolittle who has a very different view on the subject. Obviously there are people with different views. That's what being on the seat of being in a public office is about. There are times and issues where you have to make a decision. It's not easy, and this is a tough one for you. But you've had all the input, are you going to reimpose territorial rating, and if so, what kind of territorial system are you going reimpose?

COMMISSIONER GILLESPIE: Senator, I believe that you have chaired that committee for many, many years now. Maybe it has been close to a decade. And the Legislature has been totally, apparently, incapable of resolving the issue, and the Department of Insurance is the one that has to come up with the answer. And what I am telling you is that we will be making the decision because of the fact that the Legislature, for the decade or so that this issue has been before it, has been unable to do anything. We are the ones that are going to have to address it.

But, again, what is before the Department of Insurance is the fact that the Supreme Court, by its decision, has protected the insurance companies, and what the Department of Insurance is trying to do is to protect the policyholders. And what we are trying to do is come up with something that will protect both the people that are paying too high and the people that are happy with what they are paying, and I don't know whether we can do it. As a matter of fact, I'll tell you something. I don't think we can. I don't think we can do it. And again, that is why you are going to have to act finally. It is going to be before you. There is no doubt in my mind.

MR. COLLIS: Mr. Chairman?

CHAIRMAN ROBBINS: Mr. Collis?

MR. COLLIS: It may not be very sexy, it may not be much in terms of political rhetoric, but let me ask the Commissioner to refer to the law of the State of California. Section 1861.02 of Prop. 103 was upheld entirely by the California Supreme Court. Section 1861.02 says -- this is the law of the State of California -- "Rates and premiums for an automobile insurance policy shall be determined" -- shall be determined -- "by application of the following factors in decreasing order of importance: The insured's driving safety record, the number of miles he or she drives annually, the number of years of driving experience the insured has had, and such other factors as the Commissioner may adopt by regulation that have a substantial relationship to the risk of loss." Mr. Chairman, that is the law of the State of California that the Commissioner is sworn to uphold.

Regulations, Mr. Chairman, under the law of the State of California must be adopted pursuant to a formal legal process. That process says that there shall be formal hearings on which the public can comment and that any factors adopted, like territory, Senator Doolittle and Senator Davis, that

are proven to have a relationship to the risk of loss may be adopted.

The problem is there has been no evidence -- not rhetoric, not press conferences -- evidence, statistical and actuarial evidence, that territory has a relationship to the risk of loss. In fact, the only evidence -- not rhetoric -- evidence on the record indicates that territory has nowhere near the importance in terms of predicting the risk of loss that the mandatory factors under 103 has.

Mr. Chairman, the most important thing that could come out of this hearing today is if you are able to obtain a commitment from the Insurance Commissioner that she will abide by the law of the State of California, which is 1861.02 of Prop. 103 and which is an adherence to the Administrative Procedures Act. And if this committee allows any agency in the State of California, including a renegade insurance department, to ignore the Administrative Procedures Act, there are going to be no legal controls over any agency. This will set a precedent that will turn loose agencies across the state from any adherence to the law. That law's the Administrative Procedures Act. It applies to every agency in the state and it is specifically applied to the Department of Insurance by Prop. 103.

CHAIRMAN ROBBINS: Okay, the Commissioner is going to follow the law. I know the Commissioner well enough to know the Commissioner is going to follow the law. The issue is in doing that what policy she is going to establish. It is my intention to re-ask the question to get an answer to that, but first, Assemblywoman Moore had a question she wanted to ask.

ASSEMBLYWOMAN GWEN MOORE: Thank you, Senator Robbins. My question was more along the line of -- and I won't make the same statement that I was going to make because it was very similar to the one that was just made by Conway Collis -- but Commissioner Gillespie, you and I have worked over the years and have come up with a number of good measures, including the hearings where people who feel that their rates are too high that now will compel -- and thank you, Senator Robbins, for your assistance in that measure, which is also a part -- which is something that could be used as we go through this process and ought to be used because, again, it is now state law.

But my question is: At what point do we begin to see the justification for you not to implement the territorial rating or take it out? We've gone round and round. There has not been that data. I carried legislation because everyone had said for some time that this was a problem. We have legislation that now demands that the collective data gathering and so forth be a part of -- that information ought to be available now. So what basis are you using to resist territorial rating as a factor?

COMMISSIONER GILLESPIE: First of all, Assemblywoman, let me just say that the base of our studies has been the data that we have been collecting pursuant to your law, which has been of enormous assistance to us. And really, without your law, the Department of Insurance would simply not have had the data available to it that it now has, and we have -- that data has always been public. Certain members of the Legislature have come down and looked at it, certain of their staff people have come and looked at it. We have over and over made the same offer to the proponents of Prop. 103. I guess they have finally accepted it. I'm not sure just what it means, but your data is what has been the most helpful tool in our hands in terms of trying to understand the intricacies of the way that the insurance companies rate their policies.



The problem that we have is that -- you know, if things were as easy as the proponents of the Proposition make us believe, the Legislature would not have been deadlocked for more than a decade.

The problem that we have is that on the one hand we have the statute that says that territory can no longer be given the same weight that it has been given in the past, and at the same time here comes the Supreme Court and says the insurance companies are going to be entitled to a fair and reasonable rate of return. So how are we going to manage that?

ASSEMBLYWOMAN MOORE: I have a problem with the way that that came down.

COMMISSIONER GILLESPIE: How are we going to manage that?

ASSEMBLYWOMAN MOORE: Commissioner, there is some concern with the way that that language was written, because obviously the Proposition 103 and some of the others are based upon the same rate-setting mechanisms that are used by the Public Utilities Commission in setting and determining rates. I mean, that's the basis upon which it's done. And when we talk rate of return we're talking something similar there. And I probably more than anyone in the Legislature understand what's going on there. The problem is...

COMMISSIONER GILLESPIE: And the cases used by the court were utility cases.

ASSEMBLYWOMAN MOORE: The problem is that rate of return is based on something other than just a profit-oriented basis. It's based upon some prudence that the factors that were used to get there. I haven't seen any evidence that you're looking to look at the prudence of the expenditures that the insurance companies are doing in any model that simply looks at and guarantees -- it doesn't guarantee you just flat out a 13 or a 12 percent rate of return. There has to be some demonstration that what you expended that money for was appropriate and in the best interest of what you were doing.

COMMISSIONER GILLESPIE: You missed the first part of our hearing, but that's exactly the points that we were going across, and what I made very clear, and let me say it again, is that those precise concerns are what are being addressed today at a meeting here in Los Angeles where the Consumers Union, Insurance Consumers Action Network, Public Advocates, the Department of Insurance, lawyers for the insurance industry, as well as the Attorney General's office, are all working on right now. So that is precisely the area that is being worked on.

ASSEMBLYWOMAN MOORE: But the problem I have with that, in order to do that, the Public Utilities Commission staff is about ten-fold what yours is, and I don't understand how you're going to be able to do what they're having trouble doing with far less staff, far less sophistication in terms of what's going on, and...

COMMISSIONER GILLESPIE: No, no, no. Staff is not a problem. We have the budget that we need. Both the Assembly and the Senate have been very cooperative with us in providing us with the staffing that we need. We may be coming back...

ASSEMBLYWOMAN MOORE: We'd be willing to do it but the concern has been that your request did not...

COMMISSIONER GILLESPIE: No, we are actually going to be coming -- no, we have what we need in terms of staffing. We are going to be requesting probably, in all likelihood, some more

emergency funding because we have had to do so many things up front, which we originally did not intend, because of the Supreme Court's decision that has put certain things way up in the front so much.

But in terms of the overall, no. We are satisfied with what we have and what the Governor and the Legislature has given us. We are not in any way handicapped in that way. I appreciate your concern, though.

ASSEMBLYWOMAN MOORE: No, it's not a concern. The concern -- I guess it is, because it's taking this long and delays have been that may have been corrected had there been the adequate staff and...

COMMISSIONER GILLESPIE: No. The delays, Assemblywoman, are not caused by the Department of Insurance. The problem that we have is that until we knew what the Supreme Court was going to do, which is turn Proposition 103 over on its head with this fair rate of return standard, we were very much handicapped in terms of what we could do with certain things.

The issue was the law. It was not staffing. We did not know what the law of California was going to be until it became effective June 3rd.

ASSEMBLYWOMAN MOORE: Well, you knew what the law was. You didn't know what some of the interpretations were going to be, but that should not have deterred you from doing it.

COMMISSIONER MOORE: Ah, ah, but those interpretations are what is causing us to make, you know, to spend sleepless nights, because those interpretations unfortunately protect the shareholders of the insurance companies, the owners of the insurance companies, and the problem is that the ones that are left out hanging out there and the ones that we are doing our utmost and we're really suffering over in order to protect are the policyholders. That's where we're at. Again, the policyholders are the ones in this whole process that we need your help for. Those are the ones that we need your help for.

ASSEMBLYWOMAN MOORE: Well, I mean, I think that becomes quite clear that the shareholders are being protected.

COMMISSIONER GILLESPIE: That's right.

ASSEMBLYWOMAN MOORE: But the policyholders and the others are the ones that we're concerned about, particularly in my district where we pay a disproportionate amount of money for people who have good driving records that look just like some of the driving records who pay half of what the people in my district pay for.

The people voted, and I disagree with your first statement vehemently. You talked about people didn't know what they were voting on. One of the arguments that was advanced was the inequities that were imposed by territorial rating. People knew that. The whole insurance companies' attack on Proposition 103 was based on the fact that this was some kind of charity to Los Angeles and the Los Angeles area in terms of reduction of rate, their whole campaign against it.

So people knew what they were voting for. People believed that their driving record ought to be based -- it ought to be based on their driving record and not where they drive. Since people drive through my district to get to wherever they're going -- actually work in my district -- and they ought

not to be treated differently because of where they house their automobile.

COMMISSIONER GILLESPIE: Assemblywoman, what the people voted for, in my opinion, is they all want their rates to go down.

ASSEMBLYWOMAN MOORE: The rates are too high for everybody.

COMMISSIONER GILLESPIE: For everybody, and they all want...

ASSEMBLYWOMAN MOORE: And there's no reason why they shouldn't come down for everybody.

COMMISSIONER GILLESPIE: Well, that would be a delight except that we have the fair and reasonable return standard of the Supreme Court. And what I would very greatly...

ASSEMBLYWOMAN MOORE: But the fair and reasonable return standard...

COMMISSIONER GILLESPIE: Please let me finish. It's not fair.

ASSEMBLYWOMAN MOORE: But see, what the problem is that you're not answering the question. You indicated that...

CHAIRMAN ROBBINS: Let me see if I can guide this towards getting an answer to the question. I think different interpretations can be put upon what the people voted, but I think that the general conclusion would be that a majority of the people were voting against territorial rating. However, the Commissioner was given authority to impose rating standards in addition to the primary ones established in Prop. 103. The question is: What is your policy going to be? Are you going to reimpose territorial rating? If so, what type of territorial rating are you going to reimpose?

COMMISSIONER GILLESPIE: Senator, what I am sitting here telling you is that my wrenching decision is that if I go one way, I hurt one group of people. If I go another way, I hurt another group of people. And yet, everyone...

CHAIRMAN ROBBINS: And if you don't decide and you delay you hurt everyone.

COMMISSIONER GILLESPIE: Ah. No. The people in the areas who did not...

CHAIRMAN ROBBINS: You hurt everyone except the insurance companies if you delay.

COMMISSIONER GILLESPIE: The insurance companies are protected by the Supreme Court, sir, and let's not forget that. On the other hand, I can assure you, and the masses, the masses of correspondence from areas that are afraid of the higher rates is part of our record, and they tell us that what they're looking for is not the same as what the people in the higher rated areas are looking for.

And particularly with regards to the comments by Assemblywoman Moore, I have worked very hard with the people of your district, as you know, and we did put together AB 354, which we put together with the help of the Latino Issues Forum, the California Urban League, and a list of minority groups that looks like Who's Who in the minority community. And that is the kind of...

ASSEMBLYWOMAN MOORE: I know you don't want me to start talking about my problems with AB 354, and, I mean, because there are major problems but I don't think that that has anything to do with the question of...

COMMISSIONER GILLESPIE: Yes, it does!

CHAIRMAN ROBBINS: No, no, no, no. Wait a second. Wait a second.

COMMISSIONER GILLESPIE: Yes it does, because everyone wants their rates to go down.

CHAIRMAN ROBBINS: I understand.

COMMISSIONER GILLESPIE: Everyone.

CHAIRMAN ROBBINS: Roxani. Everyone wants their rates to go down. The question is: What is your policy going to be? In public office, we have to take tough positions. I've got a group of constituents that say they want this, I've another group of constituents that say don't do it. I have to decide which group I'm going to go with. You have to decide. What is your policy going to be? Are you going to reimpose territorial rating, and if so, what type of territorial rating? Are you going to say yes to the people in Los Angeles who are saying get rid of it, or are you going to say yes to the people in Northern California who are saying don't do it? What is your policy going to be?

COMMISSIONER GILLESPIE: My policy is going to be to uphold the law, and somehow find a way to protect as many people as I possibly can. And Senator, what is going to happen is that the regulations are going to be shortly made available for public comment, and at that point, we would be very grateful for your comments as well as the comments of everybody else.

And incidentally, we did have lots of hearings, and you, as a matter of fact, did participate.

CHAIRMAN ROBBINS: Yes, I did. One last question and then I will go on to the next subject. Define "shortly".

COMMISSIONER GILLESPIE: It's going to be quickly.

CHAIRMAN ROBBINS: Your ability to use the Thesaurus is undoubted. The question is could you define "quickly"?

COMMISSIONER GILLESPIE: Well, it has taken the Legislature a decade. Proposition 103 became effective June 3rd. Let's see now, June, July, August, September. I would say that within four months the Department of Insurance is going to present the people of California with its proposed solution. And we have moved in months as opposed to what the record of other branches of government have been.

CHAIRMAN ROBBINS: Do you mean you will establish your policy on territorial rating within four months from June 3rd? Is that what you're telling me?

COMMISSIONER GILLESPIE: Within the month of September.

CHAIRMAN ROBBINS: That's fair enough, within the month of September.

UNIDENTIFIED: Mr. Chairman, a short?

CHAIRMAN ROBBINS: All I wanted was a definition. I'm ready to go on to another subject.

MR. ROSENFELD: Mr. Chairman? Could we make a brief response, too?

ASSEMBLYWOMAN MOORE: I just want one last question, and then...

CHAIRMAN ROBBINS: Okay. Two minutes and then one minute, and then we're on to another subject.

MR. ROSENFELD: I just need to correct two things for the record. First of all, if it's implemented correctly and lawfully, good drivers everywhere will have the benefit of the savings that 103 mandates, and bad drivers will pay more, if it's done correctly.

It's very important for the committee to understand one thing, and I really have to -- the

Commissioner's creative interpretation of the State Supreme Court's ruling on 103 has just gone too far. The State Supreme Court said vis-a-vis the rollbacks and exemptions, the companies had to prove that they could be a reasonably efficient insurer and therefore would be entitled to a fair rate of return.

Insurance companies did not even challenge the provision of 103 which mandates the downgrading of territorial rating. Moreover, it lifted the stay on 103 that addressed that provision of 103 which mandated changes in territorial rating as of December 8th. We have since then to begin this proceeding and it still hasn't even begun.

Finally, there is no such thing as a rate of return for insurers by territory or by county. That is totally ridiculous. It's not even first-year law school interpretation of the California Supreme Court's decision. That would -- taken to its ridiculous extreme, that would mean that the Supreme Court somehow said that the insurance companies would be entitled to a fair rate of return on every policyholder. Wrong. The court just said as a company, it must have a fair rate of return. It did not say anything about this provision of 103, and it's wrong for the Commissioner to suggest that it did.

CHAIRMAN ROBBINS: Assemblywoman Moore, one minute.

ASSEMBLYWOMAN MOORE: Just a last question. Commissioner, you started to talk about the dilemma that you found yourself in with one group here and another group there, and the Senator indicated that well, you've got people in L.A. that have equally as much and then you said no, and I wondered what your thought was on that.

COMMISSIONER GILLESPIE: I said no as to what?

ASSEMBLYWOMAN MOORE: He started to say something and then you said no, and I'm just a little bit concerned and wanted to know what your thought was.

COMMISSIONER GILLESPIE: I guess I can't recall whatever deep thought I had at that point. I'm afraid I just don't remember, I'm sorry.

CHAIRMAN ROBBINS: She was actually thinking no, that's enough of discussing that issue. Let's get on to the next point.

ASSEMBLYWOMAN MOORE: Okay. Thank you for helping her.

CHAIRMAN ROBBINS: When she finds out what the next point is she may not be as happy that she went there. By the way, we've gotten you a back-up 12:15 reservation out of Burbank which should get you into Sacramento at 1:35, in time for your 2:00 meeting with the Governor.

COMMISSIONER GILLESPIE: You do. Oh, bless your heart.

CHAIRMAN ROBBINS: I knew you'd appreciate the opportunity to stay a little longer.

COMMISSIONER GILLESPIE: What is the next flight that you have?

CHAIRMAN ROBBINS: 12:15, United Airlines, out of Burbank, so you don't have to make the 11:50 plane.

COMMISSIONER GILLESPIE: You're sure that is there because...

CHAIRMAN ROBBINS: Yes, we have a confirmed reservation for you.

COMMISSIONER GILLESPIE: Okay.

SENATOR DAVIS: But it's United Express, probably, and that's never dependable. So rots of

ruck.

COMMISSIONER GILLESPIE: Please, help me. I mean, I'm going to get in trouble if I miss my appointment.

CHAIRMAN ROBBINS: We're moving as quickly as we can.

COMMISSIONER GILLESPIE: We have five minutes, Senator, please? You promised.

CHAIRMAN ROBBINS: Two subjects. I'm not the one who's prolonged things. Two subjects I want to deal with very quickly and then we will complete the hearing. The first one is the question of private discussions. Prop. 103 contains a prohibition...

COMMISSIONER GILLESPIE: Since I understand your question, can I just answer it?

CHAIRMAN ROBBINS: Let me state it very quickly. Prop. 103 contains a prohibition against private discussions with insurance companies or any party about rate regulations. There were media reports of private discussions with State Farm, of meetings with State Farm. Did those meetings involve discussions of rate regulations?

COMMISSIONER GILLESPIE: Senator, I believe that that question has already been answered by my staff. It's not a question of Proposition 103, it's a question of appropriate regulatory behavior. In a regulatory agency, the system is bifurcated. The attorneys who represent the Department, and are the ones that are in contact with the respondents and the parties to the various actions, are the ones that meet with the various bodies of the proceedings. The decision makers do not. I at no time had any meetings with State Farm or any other respondent. That is totally inappropriate. And neither do my administrative law judges. I believe that question was already answered.

CHAIRMAN ROBBINS: Okay, let me move to what is the last subject we're going to try to cover today, which is the question of inefficient versus efficient companies. You are starting with the most efficient and the most profitable companies, and you are looking at the prospect of 11.2 percent rate of return. In my personal opinion, that should be lower. I think an 8.75 would be more of an accurate return based upon overall return of financial institutions.

COMMISSIONER GILLESPIE: Join us. Join us and we will be glad to have your input in our process.

CHAIRMAN ROBBINS: I have joined you in the past, and subject to my legislative duties I will join you again. The question is: Are you going to allow, when you establish rates for the most efficient companies, are you going to allow the companies that have been less efficient, that have charged higher rates in the past, that have not been as efficient to have the same rate of return as the more efficient companies, thus resulting in allowing that company to charge a higher rate for the identical product?

COMMISSIONER GILLESPIE: Senator, that is precisely what is before the hearings that we have started. That is precisely one of the issues that is being worked on today by the consumer groups, the Attorney General's office, and the Department of Insurance, and the representatives of the insurance companies. This is exactly the question that is being worked on today.

Our intent is to determine how we can best decide, how we can best determine what is an efficient insurance company, because obviously, one that underwrites a simple product can do so with

a lower overhead. One underwrites a complex product needs a higher overhead. Then you have all kinds of other differentiations such as long tail lines that may have more risk, short tail lines that have lower risks and so on and so forth, and these very technical and intricate problems are what are being worked on today. And again, I renew my invitation to you and to your staff to join us in that process.

CHAIRMAN ROBBINS: Two minutes for the authors of Prop. 103, and then I will take not more than two minutes to wrap up...

COMMISSIONER GILLESPIE: Do you need me for that? Or can I just go?

CHAIRMAN ROBBINS: We'll get you out of here within not more than four minutes, and then you can choose which airport to go to. Mr. Collis?

SENATOR DAVIS: Was that authors plural?

CHAIRMAN ROBBINS: Whoever wishes to speak.

MR. COLLIS: If we have two minutes, we'll each take a minute. Let me just comment briefly. First of all, I must say that I'm a bit offended. I think that speaking to the concerns of the people of California in a public forum like this, the first opportunity that we have had as consumer representatives to question the Commissioner and an opportunity for the committee to, on behalf of your constituents, to question the Commissioner, it's frankly offensive. I frankly think that that's more important than a meeting with the Governor.

Let's just look at the history of this for a moment and you will see the reason for consumer concern and the necessity for filing suit yesterday.

First, the Commissioner has continued today to refuse to answer the question what about the 184 companies that were mysteriously exempted from the mandatory 20 percent rollback, based on the illegally developed 11.2 figure that the Commissioner came up with.

Second, as an administrator, I have got to say that the Commissioner did one thing that is astonishing today. She somehow interpreted the California Supreme Court's decision that upheld 103 to the whole issue of territorial rating. It's important for the committee to understand the insurers didn't even raise that issue, never mind the Supreme Court address it. The insurers didn't even claim that the fair rate of return issue applied to the way our rates were going to be set.

Third, the Commissioner, in front of a legislative oversight committee today, refused to agree to follow the mandates of California law, the Administrative Procedures Act. I think this committee should insist on it.

And fourth, the Commissioner continued to go back to rhetoric with regard to a territorial rating system as opposed to a commitment to begin focusing on the evidence. I think those are the kind of reasons that gave rise to the necessity for filing suit yesterday in Sacramento Superior Court.

MR. ROSENFELD: I would just ask the Commissioner to deliver a message to the Governor.

CHAIRMAN ROBBINS: Mr. Collis owes you a minute. He used your two minutes. I made a promise to the Commissioner. I'll do mine in one minute. We've covered a number of things today. There are obviously a lot of unanswered questions. I do appreciate the Commissioner has given us a September 30 deadline by which time she will announce what she's going to do on territorial rating.

There are other questions that need to be dealt with.

Certainly we have one week of the legislative session remains, and it's important for all of us, the authors of Prop. 103, Insurance Commissioner, the Governor -- this is why I'm getting her out of here on time, so that one of the subjects she can discuss with the Governor today is what we can do next week to get some legislative relief to bring down the cost to everyone. It certainly is a goal of mine; it seems to be a goal that we share. It seems to be the one thing we can agree upon, and if we can work some changes out next week, get them to the Governor and get them signed, we can actually bring down the cost of insurance for everyone in the State of California. That's what we're supposed to be doing, that's what we need to be doing. We have a committee hearing scheduled at 12:45 p.m. Monday in Sacramento to hear legislation for that purpose. Let's hope we can work together and get something done.

Thank you very much.

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